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In the Supreme Court United States

Ex Parte WINFIELD A. GREEN,
Applying for a Writ of Mandamus

No.....

MOTION FOR LEAVE TO FILE A PETITION FOR WRIT OF MANDAMUS

AFFIDAVIT OF WINTER S. MARTIN

PETITION FOR WRIT

BRIEF IN SUPPORT THEREOF

WINTER S. MARTIN,
605 Colman Building,
Seattle, Washington,

SAMUEL B. BASSETT,
511 Alaska Building,
Seattle, Washington,
Proctors and Counsel for Petitioner.

MARTIN & DICKSON, PRINTERS, SEATTLE

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SUBJECT INDEX

	PAGE
Affidavit of Winter S. Martin	2
Motion for Leave to File a Petition for Writ of Mandamus	1
Petition	4

MOTION FOR LEAVE TO FILE A PETITION FOR WRIT OF MANDAMUS

To the Honorable, the Chief Justice and the Associate Justices of the United States Supreme Court:

WINFIELD A. GREEN, now moves for leave to file a petition for writ of mandamus upon the ground that the Honorable District Court for the Western District of Washington, sitting in the Northern Division, has refused to follow the opinion and mandate of this Honorable Court, in that certain cause entitled "AXEL LANGNES, Owner of the Diesel Halibut Vessel Aloha, Her Engines, etc., Petitioner, v. WINFIELD A. GREEN, Claimant," No. 38, on the Docket of the above entitled Court, in the October term, 1930, which said cause was argued on the 7th and 8th days of January, 1931, and decided on the 24th day of February, 1931, and reported in 282 U. S. 531-544.

This motion is based upon the accompanying affidavit of Winter S. Martin, Esq., together with a copy of the proposed petition for writ of mandamus, which is hereby made a part hereof by reference.

WITNESS OUR HANDS this 8th day of April, 1932.

SAMUEL B. BASSETT,
WINTER S. MARTIN,
Attorneys and Proctors for Claimant, Winfield A. Green.

IN THE SUPREME COURT OF THE UNITED STATES

Ex Parte WINFIELD A. GREEN, Applying for a Writ of Mandamus

No.....

AFFIDAVIT OF WINTER S. MARTIN

State of Washington, County of King, ss.

WINTER S. MARTIN, being first duly sworn upon his oath, deposes and says:

That he is one of the attorneys for the claimant (petitioner) in the above entitled cause, and makes this affidavit in support of an application for writ of mandamus in that certain cause entitled "AXEL LANGNES, Owner of the Diesel Halibut Vessel Aloha, Her Engines, etc., Petitioner, v. WINFIELD A. GREEN, Claimant," October term, 1930, reported in 282 U. S. 531-544.

Affiant further deposes that at or about the time the mandate in the above cause was received by the District Court for the Western District of Washington, sitting in the Northern Division, to-wit, on the 2nd day of April, 1931, the halibut fishing season had opened and affiant was informed, and verily believes, that the principal witnesses relied upon by Winfield A. Green, in support of his cause aaginst Axel Langnes, owner of the Diesel Halibut Vessel "ALOHA," were then absent from Seattle, engaged in fishing

operations in the Gulf of Alaska, in the territory of Alaska, and that many of said witnesses would not return to the port of Seattle until the halibut fishing season closed on the 15th day of November, 1931. That said mandate was received too late to have the cause remitted to the State Court and set down for trial during said period of time. That the Honorable District Court, who tried the limitation proceeding in the United States District Court, to-wit, the Honorable Jeremiah Neterer, was holding court in Arizona and was away from Seattle, for a considerable period of time in the Spring of 1931. That the said Honorable Court was again called away in October and November of 1931, and the matter of remitting the cause to the State Court for further proceedings was not taken up or considered, due to the absence of the Court and the absence of necessary and material State Court witnesses until early in the year 1932. That due application was made for remission of said cause to the State Court for further proceedings in conformity with the opinion rendered by the United States Supreme Court in the above cause. That such proceedings were had in the State Court, and such further proceedings in the District Court that the District Court has issued its injunction against any further proceedings in the State Court, and the cause is now pending for retrial in the United States District Court, as aforesaid.

That affiant tenders, herewith, a certified copy of the record of the proceedings in the United States District Court, at Seattle, subsequent to the entry of

the mandate of the Supreme Court in April, 1931, which, affiant alleges, is a true copy of the exact record of the District Court, as certified by the Clerk thereof under the Seal of said Court.

Affiant further alleges that the District Court has disregarded the effect and true meaning of the opinion of the United States Supreme Court in said cause, and therefore petitions for a writ of mandamus as the only effective means for procuring a review of the said decision and compliance therewith by the Honorable District Court in the above entitled cause.

WINTER S. MARTIN.

Subscribed and sworn to before me this 8th day of April, 1932.

ARTHUR COLLETT, JR.
Notary Public in and for the State of Washington, residing at Seattle.

IN THE SUPREME COURT OF THE UNITED STATES

Ex Parte WINFIELD A. GREEN, Applying for a Writ of Mandamus

No.....

PETITION

Comes now Winfield A. Green, petitioner, for a Writ of Mandamus, directed to the Honorable District Court for the Western District of Washington, in the Northern Division thereof, to compel said

court to comply with a decision and mandate of this court heretofore entered in a cause which will be specifically identified, and for grounds thereof, alleges and avers as follows, to-wit:

I

That Axel Langnes, sole owner of the American Diesel Halibut fishing vessel "ALOHA," filed a petition in the District Court of the United States, for the Western District of Washington, in the Northern Division thereof, for a limitation of liability and for an exoneration of all liability upon the single claim filed by said Winfield A. Green, in said cause, for personal injuries sustained on board said vessel "ALOHA." That thereafter, such proceedings were had in said cause upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit that a decree was entered in said Court dismissing said cause, and remanding the same to the superior Court of the State of Washington, where an action was then pending to recover damages for personal injuries which said action was commenced by Winfield A. Green against the said Axel Langnes. That thereafter, this Honorable Court granted the petition of Axel Langnes for writ of certiorari and thereupon the record in said cause was duly certified to this Honorable Court. That a decision thereon was rendered in the above entitled Court in the October term, 1930, to-wit: On the 24th day of February, 1931, which said decision is reported in the Official Reports of the United States, Volume 282, 531-544.

II

That the opinion of this Honorable Court, in the concluding paragraph, provided that:

> "The decrees of both courts below must be reversed and the cause remanded to the District Court for further proceedings in conformity with this opinion.
>
> Reversed."

III

That the mandate from this Court, in said cause, requiring the said District Court to proceed in conformity with the opinion of this Court was filed in the United States District Court, at Seattle, in the Northern Division of the Western District of Washington, on the 2nd day of April, 1931. That due to the absence of the Court and material witnesses from the jurisdiction of said District Court, said cause was not remitted to the State Court until February, 1932. That when said cause was remanded to the State Court for trial, petitioner, Axel Langnes, owner of the said "ALOHA," and defendant in that certain cause entitled "Winfield A. Green, Plaintiff, vs. Axel Langnes, et ux, No. 205037," in the Superior Court of the State of Washington, for King County, filed an amended answer claiming the right to limit his liability. That upon filing said answer, claimant, Winfield A. Green, petitioner herein, as plaintiff in said State Court cause, filed his amended reply setting forth that the matter of privity and knowledge and the seaworthiness of the fishing vessel "ALOHA" in

said cause, had been determined in the Circuit Court of Appeals, and that said determination therein was decisive of the whole matter of privity and knowledge and the right to limit liability, and that said finding and opinion of the Circuit Court of Appeals was not disturbed or affected by the opinion filed by this Honorable Court upon hearing and argument upon the writ of certiorari. That thereupon, the said Axel Langnes, petitioner in the limitation proceeding, appeared in the United States, District Court, at Seattle, before the Honorable Jeremiah Neterer, Judge thereof, and moved for an injunction and a stay of all proceedings in the State Court unless Winfield A. Green, plaintiff, would concede the right of Axel Langnes, defendant in said State Court action, a limitation of liability in said cause to the value of the vessel which had theretofore been stipulated as of $5,000.00, at the end of the voyage in which Winfield A. Green was injured. That when Winfield A. Green, by his amended reply in said State Court action, claimed the right of the State Court to adjudicate the questions of privity and knowledge, the said Honorable Jeremiah Neterer, Judge of the United States District Court for the Western District of Washington, held that the decision of the above entitled Court on certiorari required the Court to take jurisdiction and adjudicate the whole matter of the right to limit liability and thereupon said Honorable District Court enjoined Winfield A. Green from proceeding further in the State Court, notwithstanding the opinion of the above entitled Court upon certiorari, as reported

in Volume 282, of Official Reports of the United States Supreme Court, pages 531-544.

IV

That the Honorable District Court of the United States construes the opinion of this Court in said cause on certiorari, as holding that the State Court has no right to adjudicate matters of privity and knowledge and unseaworthiness upon the plea of limitation of liability in the State Court. That unless the plaintiff, in such an action, is willing to admit the right of the vessel owner to limit his liability, which necessarily requires an adjudication upon the questions of the seaworthiness of the vessel and the privity and knowledge, or the lack thereof of the owner, the cause must be removed to the Federal Court for trial. The effect of the District Court's ruling is to deny the right on the part of the State Court to adjudicate any question in a limitation proceeding in a State Court, except that of the vessel's value. That by reason of the foregoing premises, your petitioner respectfully shows that the Honorable District Court has not proceeded in conformity with the opinion of this Honorable Court in said mentioned cause. That said claimant, Winfield A. Green, petitioner herein, is now enjoined by the Honorable District Court of the United States for the Northern Division of the Western District of Washington, from proceeding in the State Court. That said cause is now set down for hearing for a trial de novo in the United States District Court in which the whole proceeding must be re-tried as a proceeding to limit

liability. Whereas, it is the contention of the petitioner in applying for this writ of mandate that:

(1): The State Court in the instant case has ample jurisdiction to determine and pass upon the question of privity and knowledge on the part of the owner or the lack thereof and the seaworthiness of the vessel, as well as the value of said vessel;

(2): That the whole matter of seaworthiness and privity and knowledge was determined by the United States Circuit Court of Appeals for the Ninth Circuit, which was not disturbed or affected by the opinion of the above entitled Court upon a writ of certiorari.

V

That the petitioner has filed a certified copy of the proceedings in the United States District Court for the Western District of Washington, Northern Division, which contains all of the matters and things pertinent to the inquiry herein and makes the same a part hereof by reference and incorporation as fully as if restated herein.

VI

Petitioner further alleges that the District Court has disregarded the effect and true meaning of the opinion of the United States Supreme Court in said cause, and therefore petitions for a writ of mandamus as the only effective means for procuring a review of the said decision and compliance therewith by the Honorable District Court in the above entitled cause.

WHEREFORE, your petitioner respectfully prays for a rule to require the Honorable District

Court to appear and show cause at a time to be fixed by this Honorable Court why a writ of mandamus should not issue against said Court requiring the Judge thereof to conform to the opinion of this Court rendered in the above entitled certiorari proceedings.

WINTER S. MARTIN
SAMUEL B. BASSETT
Attorneys for Petitioner,
Winfield A. Green.

State of Washington, County of King, ss.

WINTER S. MARTIN, being first duly sworn, says that he is one of the Proctors for WINFIELD A. GREEN, petitioner herein, and a member of the bar of the above entitled Court, and makes this verification for and on behalf of said petitioner for the reason that the said petitioner is not within the jurisdiction; that he has read said petition subscribed by him, and that the facts therein stated are true to the best of his knowledge and belief.

WINTER S. MARTIN

Subscribed and sworn to before me this 8th day of April, 1932.

ARTHUR COLLETT, JR.
Notary Public in and for the State of Washington, residing at Seattle.

(SEAL)

In the Supreme Court United States

IN THE MATTER OF THE PETITION of AXEL LANGNES, sole owner of the Diesel Halibut Vessel 'ALOHA,' her engines, etc., for exemption from, or limitation of, liability.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

Names and Addresses of Counsel:

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Seattle, Washington

SAMUEL B. BASSETT
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SUBJECT INDEX

PAGE

Statement of the Case 1

TABLE OF CASES

Ex-Parte Washington and Georgetown R. Co., 140 U. S. 91, 35 L. ed. 339 10

Gaines vs. Caldwell, 148 U. S. 228, 37 L. ed. 432 11

Petition of LANGNES—THE ALOHA—32 Fed. (2) 284 2

Re City National Bank of Fort Worth, Texas, 153 U. S. 246, 38 L. ed. 705 11

Re C. & A. Potts & Co., 166 U. S. 263, 41 L. ed. 994.. 9

Re Sanford Fork & Tool Co., 160 U. S 247, 40 L. ed. 414 8

United States Revised Statutes, Sec. 688 (U. S. C. A. Title 28, Sec. 342) 7

United States Revised Statutes, Sections 4283, 4284, 4285 (U. S. C. A. Title 46, Secs. 183, 184, 185) 1

STATEMENT OF THE CASE

In this proceeding the petitioner seeks a writ of mandamus from this court to obtain a construction by this court of its mandate in that certain cause entitled "Axel Langnes, Owner of the Diesel Halibut Vessel Aloha, Her Engines, etc., vs. WINFIELD A. GREEN," the same being cause No. 38, in the October term of 1930, which said cause was decided by this court on February 24, 1931. (282 U. S. 531-544, 75 L. Ed. 520.) Petitioner also seeks, by way of a writ of mandamus, to compel the district court to execute the said mandate of this court.

This petitioner seeks to recover damages in the state court on account of certain personal injuries sustained by himself while a member of the crew of the fishing vessel "Aloha," and for that purpose has commenced his action in the state court of Washington.

Axel Langnes, owner of said vessel, on February 24, 1928, brought a proceeding in the federal district court for the western district of Washington praying a limitation of liability under Rev. Stat. Secs. 4283, 4284, 4285, (U. S. C. A. title 46, Secs. 183, 184, 185). Following the filing of the petition the federal district issued an order restraining further proceedings in the state court, and a monition to all claimants to present their claims within a time fixed. This petitioner, in response to the monition, filed his claim in the amount of $25,000.00, for damages resulting from the personal injuries referred to above. No other claim was filed.

Thereupon, petitioner moved to dissolve the restraining order upon the ground that the state court

had jurisdiction of the cause; that there was only one possible claimant and one owner; and that the owner, therefore, might claim and obtain the advantage and benefit of the limitation of liability statute by proper pleading in the action pending in the state court. This motion the district court denied, and the cause in respect of this petitioner's claim was tried. Upon the hearing the district court determined that it should first inquire whether there was any liability, and if there was, then, whether it should be limited.

At the conclusion of this petitioner's evidence, the court held that there was no liability and entered a decree accordingly (32 Fed. [2d] 284). This petitioner appealed to the Circuit Court of Appeals for the Ninth Circuit, which court reversed the decree and remanded the case to the district court with directions to dismiss it for want of jurisdiction. The cause was then presented to this court on a writ of certiorari.

This court, in its opinion, observed as follows, to-wit: (282 U. S. 539, 75 L. Ed. 525):

> "We proceed, then, to inquire what disposition the court of appeals should have made of the case in respect of the point under consideration upon the record which was before that court. Section 24 (3) of the Judicial Code (U. S. C. title 28, Sec. 41 [3]) confers upon the district courts of the United States admiralty and maritime jurisdiction, "saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it." The provisions of the statute in respect of limitation of liability confer

upon the owner of a vessel in a variety of cases, including the present case, when loss is occasioned without the privity or knowledge of the owner, the right to limit his liability to the value of his interest in the vessel and her freight then pending. That the action brought in the state court was authorized by the first of the statutes referred to is plain. That the petition of the owner in the present case was properly brought, and that the federal court had jurisdiction to entertain it, whether there was a plurality of claims or only one, is equally clear. *White v. Island Transp. Co.*, 233 U. S., p. 351, 58 L. Ed. 996, 34 S. Ct. 589, supra. The situation, then, is that one statute gave respondent the right to a common-law remedy, which he properly sought in the state court; and another statute gave petitioner the right to seek a limitation of liability in the federal district court. Needless to say that if the case for a limitation of liability assumes such a form that only a federal court is competent to afford relief, the jurisdiction of that court is exclusive and must be exerted to dispose of the entire cause; and the action in the state court may not be further prosecuted.

Here the petition alleged that petitioner feared other claims, but no other claims were filed in response to the monition; the time therefor had expired and default had been noted; and nothing appears to suggest the possibility of any other claim. On the contrary, not only does a presump-

tion fairly arise from the nature of the accident and all the surrounding circumstances that no other claim exists, but they are such as to reflect doubt upon the good faith of the allegation that petitioner was in fear of other claims; and the fact that petitioner delayed his proceeding for four months after the commencement of the state action and until two days before the date set for the trial is confirmatory of that view. In this situation, while there is some conflict among the decisions of the lower federal courts, this court has accepted the view that, "in a state court, when there is only one possible claimant and one owner, the advantage of this section (Sec. 4283, U. S. C. title 46, Sec. 183), may be obtained by proper pleading. *The Lotta* (D. C.), 150 Fed. 219, 222; *Delaware River Ferry Co. v. Amos* (D. C., 179 Fed. 756." *Carlisle Packing Co. v. Sandanger,* 259 U. S. 255, 260, 66 L. Ed. 927, 930, 42 S. Ct. 475. See also *American S. B. Co. v. Chase,* 16 Wall. 522, 532, 533, 21 L. Ed. 369, 372.

Upon the present record, the necessary result of this holding is that the state court, in the action there pending and in the due course of the exercise of its common-law powers, was competent to entertain a claim of the shipowner for a limitation of liability and afford him appropriate relief under the statute dealing with that subject. Compare *Loughin v. McCaulley,* 186 Pa. 517, 48 L. R. A. 33, 65 Am. St. Rep. 872, 40 Atl. 1020. Notwithstanding this, however, the shipowner was

free to invoke the jurisdiction of the federal district court (*White v. Island Transp. Co.*, 233 U. S. 346, 58 L Ed. 993, 34 S. Ct. 589, supra); and, that having been done, the question which arose was not one of jurisdiction, but, as will later more fully appear, was whether as a matter of discretion that jurisdiction should be exercised to dispose of the cause.

The term "discretion" denotes the absence of a hard and fast rule. The *Styria v. Morgan,* 186 U. S. 1, 9, 46 L. Ed. 1027, 1033, 22 S. Ct. 731. When invoked as a guide to judicial action it means a sound discretion, that is to say, a discretion exercised not arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result.

In the case now under review the problem presented to the district court by the motion of respondent was quite simple. Upon the face of the record the state court, whose jurisdiction already had attached, was competent to afford relief to the petitioner. The difference in the effect of adopting one or the other of the two alternatives presented to the district court was obvious. To retain the cause would be to preserve the right of the shipowner, but to destroy the right of the suitor in the state court to a common-law remedy; to remit the cause to the state court would be to preserve the rights of both parties. The mere

statement of these diverse results is sufficient to demonstrate the justice of the latter course; and we do not doubt that, in the exercise of a sound discretion, the district court, following that course, should have granted respondent's motion to dissolve the restraining order so as to permit the cause to proceed in the state court, retaining, as a matter of precaution, the petition for a limitation of liability to be dealt with in the possible but (since it must be assumed that respondent's motion was not an idle gesture but was made with full appreciation of the state court's entire lack of admiralty jurisdiction), the unlikely event that the right of petitioner to a limited liability might be brought into question in the state court, or the case otherwise assume such form in that court as to bring it within the exclusive power of a court of admiralty. The failure to do this, in our opinion, constituted an abuse of discretion subject to the correcting power of the appellate court below and of this court.

* * * *

The decrees of both courts below must be reversed and the cause remanded to the District Court for further proceedings in conformity with this opinion.

Reversed."

After the mandate of this court was filed in the district court, the district court remanded said cause to the state court for trial. Thereupon, the owner of said fishing vessel "Aloha" set forth in his answer the af-

firmative defense of limitation of liability. This petitioner (plaintiff in state court action) denied said affirmative defense for limitation of liability. The defendant in said state court action thereupon applied to the district court for a restraining order, restraining this petitioner from prosecuting his action in the state court. The district court thereupon issued said restraining order and took full cognizance of the case in a limitation proceeding in the district court upon this petitioner's refusal to admit the right to limit liability.

From the foregoing statement of the pertinent facts of this case, it seems apparent that the district court has refused to give full effect to the mandate of this court, or has mistaken or misconstrued the true intent and meaning of the same. As set forth in this court's opinion hereinabove quoted, it is obvious that the state court is competent to grant full and adequate relief to both parties in this case, there being but one owner and one claimant.

The authority for this application for writ of mandamus is found in the following citations, to-wit:

> UNITED STATES REVISED STATUTES, Sec. 688, U. S. C. A., TITLE 28, Sec. 342, provides as follows, to-wit:
>
> "S. 342 (Judicial Code, section 234.) PROHIBITION AND MANDAMUS. The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles

and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice-consul is a party. (R. S. Sec. 688; Mar. 3, 1911, c. 231, Sec. 234, 36 Stat. 1156.)"

One of the leading authorities upon the question of the authority of this court to issue a writ of mandamus as a method to obtain a construction by this court of its mandate and to effect full compliance therewith by the district court is the case of *Re Sanford Fork & Tool Co.,* 160 U. S. 247, 40 L. Ed. 414, in which case Mr. Justice Gray, delivering the opinion of the court, remarked as follows, to-wit:

"When a case has been once decided by this court on appeal and remanded to the circuit court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The circuit court is bound by the decree as the law of the case; and must carry it into execution, according to the mandate. That court cannot vary it or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded. *Sibbald v United States,* 37 U. S. 12 Pet. 488, 492, (9: 1167, 1169); *Texas & P. R. Co. v. Anderson,* 149 U. S. 237 (37: 717). If the circuit court mistakes or misconstrues the decree of this court, and does

not give full effect to the mandate, its action may be controlled, either upon a new appeal (if involving a sufficient amount), or by a writ of mandamus to execute the mandate of this court. *Perkins v. Fourniquet,* 55 U. S. 14 How. 313, 330 (14: 435, 442); *Re Washington & G. R. Co.,* 140 U. S. 91 (35: 339); *City Nat. Bank v. Hunter,* 152 U. S. 512 (38: 534, 153 U. S. 246) (38: 705). But the circuit court may consider and decide any matters left open by the mandate of this court; and its decision of such matters can be reviewed by a new appeal only. *Hinckley v. Morton,* 103 U. S. 764 (26: 458); *Mason v. Pewabic Min. Co.,* 153 U. S. 361 (38: 745); *Nashua & L. R. Corp. v. Boston & L. R. Corp.,* 5 U. S. App. 97, 51 Fed. Rep. 929. The opinion delivered by this court at the time of rendering its decree may be consulted to ascertain what was intended by its mandate; and either upon an application for a writ of mandamus ,or upon a new appeal, it is for this court to construe its own mandate, and to act accordingly. *Sibbald v. United States,* 37 U. S. 12 Pet. 488, 493 (9: 1167, 1169); *West v. Brashear,* 39 U. S. 14 Pet. 51 (10: 350); *Wayne County Suprs. v. Kennicott,* 94 U. S. 498 (24: 260); *Gaines v. Caldwell* (*"Gaines v. Rugg"*), 148 U. S. 228, 238, 244 (37: 432, 434, 437)."

In the case of *Re C. & A. Potts & Co.,* 166 U. S. 263, 41 L Ed. 994, Mr. Justice Gray, again delivering the opinion of the court, quotes at length and with approval from *Re Sanford Fork & Tool Co.,* supra.

Mr. Justice Blatchford, delivering the opinion of this court in the case of *Ex Parte Washington and Georgetown R. Co.,* 140 U. S. 91, 35 L. Ed. 339, at 341, held as follows, to-wit:

> "A mandamus will lie to correct such an error, where there is no other adequate remedy, and where there is no discretion to be exercised by the inferior court. *Ex Parte Sibbald,* 37 U. S. 12 Pet. 488 (9: 1167); *Ex Parte Bradley,* 74 U. S. 7 Wall, 364, 376 (19: 214, 218); *Virginia v. Rives,* 100 U. S. 313, 329 (25: 667, 673).
>
> In *Perkins v. Fourniquet,* 55 U. S., 14 How. 328, 330 (14: 441, 442), the circuit court had failed to carry out the mandate of this court, and the matter was brought to this court by an appeal. A motion having been made to dismiss the appeal on the ground that it would not lie, this court said: "This objection to the form of proceeding involves nothing more than a question of practice. The mandate from this court left nothing to the judgment and discretion of the circuit court, but directed it to carry into execution the decree of this court, which was recited in the mandate. And if the decree of this court has been misunderstood or misconstrued by the court below, to the injury of either party, we see no valid objection to an appeal to this court, in order to have the error corrected. The question is merely as to the form of proceeding which this court should adopt, to enforce the execution of its own mandate in the court below The subject might without doubt be

brought before us upon motion, and a mandamus issued to compel its execution."

In the case of *Re City National Bank of Fort Worth, Texas,* 153 U. S. 246, 38 L. Ed. 705, at 706, this court held that mandamum is the proper remedy if the mandate of this court has been disregarded.

In the case of *Gaines v. Caldwell,* 148 U. S. 228, 37 L. Ed. 432, at 435, it was held as follows, to-wit:

> "It is contended for the respondent that the construction of the intent and meaning of the opinion of this court in *Goode v. Gaines* was a matter for the exercise of judicial discretion by the circuit court. But we are of opinion that it is proper for this court, on this application for a writ of mandamus, to construe its own mandate in connection with its opinion; and if it finds that the circuit court has erred, or acted beyond its province, in construing the mandate and opinion, to correct the mistake now and here, and to do so by a writ of mandamus."

Under the above authorities and the opinion of this court upon said writ of certiorari, we respectfully submit that the district court has either misconstrued or mistaken the decree of this court, or has not given full effect thereto, and that therefore this petitioner's application for writ of mandamus herein should be granted.

Respectfully submitted,

WINTER S. MARTIN,
SAMUEL B. BASSETT,
Attorneys for Petitioner,
Winfield A. Green.

FILE COPY

In the Supreme Court United States

Transcript of Record

Ex Parte WINFIELD A. GREEN,
Applying for a Writ of Mandamus

Transcript of Applicable Parts of the Record of the United States District Court for the Western District of Washington, Northern Division, in that Certain Cause Numbered and Entitled As Follows:

IN ADMIRALTY

No. 12189

"IN THE MATTER OF THE PETITION of AXEL LANGNES, sole owner of the Diesel Halibut Vessel 'ALOHA,' her engines, etc., for exemption from, or limitation of, liability.

WINTER S. MARTIN,
605 Colman Building,
Seattle, Washington,

SAMUEL B. BASSETT,
511 Alaska Building,
Seattle, Washington,
Proctors and Counsel for Petitioner.

MARTIN & DICKSON, PRINTERS, SEATTLE

In the Supreme Court United States

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Ex Parte WINFIELD A. GREEN,
Applying for a Writ of Mandamus

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"IN THE MATTER OF THE PETITION of AXEL LANGNES, sole owner of the Diesel Halibut Vessel 'ALOHA,' her engines, etc., for exemption from, or limitation of, liability.

MARTIN & DICKSON, PRINTERS, SEATTLE

SUBJECT INDEX

	PAGE
Affidavit (In Support of Petition for Restraining Order)	4
Affidavit of Samuel B. Bassett (In Support of Petition for Rehearing on Petitioner's Motion for Restraining Order)	34
Amended Answer	6
Answer	23
Appearance Docket	30
Clerk's Certificate to State Court Record	31
Complaint	20
Decision of District Court	39
Mandate of United States Supreme Court	46
Motion to Dissolve Restraining Order	1
Motion for Restraining Order	3
Order Dissolving Restraining Order	2
Petition for Rehearing on Petitioner's Motion for Restraining Order	32
Reply	15
Reply (To Amended Answer)	18
Restraining Order	43
Second Amended Reply	35

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

IN THE MATTER OF THE PETITION OF AXEL LANGNES, sole owner of the Diesel halibut vessel "ALOHA," her engines, etc., for exemption from, or limitation of, liability.

IN ADMIRALTY

No. 12189

(Title of Court and Cause)

MOTION TO DISSOLVE RESTRAINING ORDER

Comes now the claimant, Winfield A. Green, by Winter S. Martin and Samuel B. Bassett, his attorneys, and moves the court for an order dissolving the restraining order entered in the above entitled cause on the 4th day of February, 1928, in conformity with the decision and decree of the Supreme Court of the United States.

WINTER S. MARTIN *and*
SAMUEL B. BASSETT,
Proctors for Claimant.

Service of the foregoing Motion, by the receipt of a copy thereof, acknowledged this 31st day of December, 1931.

BRONSON, JONES & BRONSON,
Proctors for Petitioner.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, December 31, 1931.

ED. M. LAKIN, *Clerk.*
By T. W. EGGER, *Deputy.*

(Title of Court and Cause)

ORDER DISSOLVING RESTRAINING ORDER

This matter coming on for hearing this day on the motion of the claimant, Winfield A. Green, for an order dissolving the restraining order entered in the above entitled cause on the 4th day of February, 1928; and it appearing to the court that the Supreme Court has held and decreed that said restraining order should be dissolved; and the court being fully advised in the premises,

IT IS THEREFORE ORDERED that the restraining order entered in this cause on the 4th day of February, 1928, enjoining the claimant Winfield A. Green from further prosecuting his action for personal injuries, in the Superior Court of the State of Washington for King County, be and the same is hereby vacated and dissolved.

Done in Open Court this 4th day of January, 1932.

JEREMIAH NETERER,
Judge.

O. K.

BRONSON, JONES & BRONSON,
Proctors for Petitioner.

Presented by:

SAMUEL B. BASSETT.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, January 4, 1932.

ED. M. LAKIN, *Clerk.*
By S. COOK, *Deputy.*

(Title of Court and Cause)

MOTION FOR RESTRAINING ORDER

Comes now AXEL LANGNES, petitioner in the above entitled proceeding, and respectfully moves the court for an order restraining Winfield Green from the further prosecution of that certain action now pending in the Superior Court of the State of Washington, for King County, entitled WINFIELD A. GREEN, Plaintiff, vs. AXEL LANGNES and RAGNA LANGNES, his wife, being cause number 205037 of said Superior Court, against the petitioner herein, and the institution and prosecution of any and all suits, actions or legal proceedings of any nature or description or descriptions whatsoever, except in this limitation of liability proceeding against petitioner for the Diesel Halibut Vessel "ALOHA," her engines, boats, tackle, apparel, furniture and appurtenances,

in respect of any claim arising out of or connected with the occurrence mentioned in the petition herein.

This motion is based upon the affidavit of Robert E. Bronson, copies of the complaint, answer, reply, amended answer and reply thereto in said State Court proceedings, certified to by the Clerk of said Superior Court and certified copy of docket entries of said Superior Court.

This motion is further based upon the decision of the Supreme Court of the United States in the case of Axel Langnes, owner of the Diesel Halibut Vessel "Aloha," her engines, etc., petitioner, vs. Winfield A. Green, claimant, 282 U. S. 531, 75 L. Ed. 520, and Mandate of said Supreme Court in the above entitled proceeding.

BRONSON, JONES & BRONSON,
Proctors for Petitioner.

(Title of Court and Cause)

AFFIDAVIT

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION, ss.

ROBERT E. BRONSON, being first duly sworn, on oath deposes and says: That he is one of the proctors for the petitioner in the above entitled proceeding, having had charge of all proceedings in said cause on behalf of said petitioner; that on the 4th day of January, 1932, as appears from the files and records in the above entitled proceeding, there was entered an order vacating that certain restraining order, thereto-

fore entered by said court on the 4th day of February, 1928.

That subsequent to said 4th day of January, 1932, affiant, on behalf of petitioner, as defendant in a certain cause pending in the Superior Court of the State of Washington for King County, Cause No. 205037 therein, wherein Winfield A. Green, claimant herein, is plaintiff, and Axel Langnes and Ragna Langnes, his wife, are defendants, leave of the court being theretofore first had and obtained, filed an amended answer, setting up said defendant's right to limit his liability in said cause to the value of said vessel "ALOHA," and her pending freight, if any, all as more particularly appears in that certain copy of said amended answer, certified to by the Clerk of said Superior Court and attached hereto; that thereupon said Winfield A. Green, claimant herein and plaintiff in said Superior Court action, on the 21st day of January, 1932, served upon affiant, and filed his reply to said amended answer, denying said defendant's right to so limit his liability, and setting said right in issue, all as more particularly appears from the copy of said reply, certified to by the Clerk of said Superior Court and attached hereto.

That no other, or further papers or proceedings have been served or filed in said Superior Court action, and said cause is now at issue and upon the trial calendar of said Superior Court upon the issues made up by the complaint of said Winfield A. Green, a certified copy whereof, attested by the Clerk of said

Superior Court, is attached hereto and to said amended answer and said reply.

Further Affiant sayeth not.

ROBERT E. BRONSON.

Subscribed and sworn to before me this 26th day of January, 1932.

STORY BIRDSEYE,
Notary Public in and for the State of Washington, residing at Seattle.

(SEAL)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

WINFIELD A. GREEN, *Plaintiff,*

vs.

AXEL LANGNES and RAGNA LANGNES, his wife, *Defendants.*

No. 205037

AMENDED ANSWER

Comes now the defendants, Axel Langnes and Ragna Langnes, husband and wife, and answering the complaint of the plaintiff herein, admit, deny and alleges as follows:

I.

Answering paragraph I, defendants admit that, at all times in said complaint mentioned, defendants were and still are husband and wife. Admit that defendant, Axel Langnes, was the owner of said motor halibut vessel "Aloha" and the whole thereof. Deny

that defendants, or either of them, employed the plaintiff in any capacity on board said vessel as alleged in said paragraph, except as hereinafter expressly alleged.

II.

Answering paragraph II, defendants deny that they employed a heavy ground line, as alleged in said paragraph, but admit that defendant, Axel Langnes, the plaintiff herein, and all other fishermen on board said vessel, jointly and as partners in a common venture and undertaking, employed a long heavy ground line to which, at intervals of thirteen feet, halibut fish hooks were attached by means of five foot leaders or ginions, and, that, whenever it was desired to raise the said ground lines for the purpose of removing fish, one end thereof was led to a Power driven capstan or windlass by means of which the said ground line with its attachments was then hove aboard said vessel over a roller fixed to the starboard rail. Admit that the main starboard back stay was secured to the hull of said vessel by means of a metal chain plate secured to the bulwark and side of said vessel in the usual and customary manner for such vessels. Deny that the defendants, or either of them, negligently placed the said roller in any respect on said vessel. Deny that said roller, or any roller over which said ground line was led, was within three or four inches of said strap back stay or chain plate, but admit that the nearest roller over which said ground line passed was within six inches of said chain plate. Further answering said

paragraph, defendants, and each of them, deny each and every other allegation, matter and thing in said paragraph contained.

III.

Answering paragraph III, defendants deny the same and each and every allegation, matter and thing in said paragraph contained.

IV.

Answering paragraph IV, defendants deny each and every allegation, matter and thing in said paragraph contained, especially denying that plaintiff has been or is damaged in the sum of twenty-five thousand dollars ($25,000.00) or any other sum or amount whatsoever, or at all.

Further answering said complaint, and by way of a FIRST AFFIRMATIVE DEFENSE thereto, defendants, and each of them, allege as follows:

I.

That prior to embarking upon the voyage mentioned in the complaint herein, the defendant, Axel Langnes, the owner of the whole of said motor halibut vessel "Aloha," entered into an oral agreement with the plaintiff herein and certain other fishermen by the terms of which said plaintiff and said defendant and said other fishermen agreed to embark upon a joint and common fishing venture, the defendant, Axel Langnes, to act as master and fisherman, the plaintiff herein to act as engineer and fisherman, and the proceeds and profits of said voyage to be divided among

said persons and fishermen on the basis of shares pursuant to the usual and customary practice among halibut fishermen from the Port of Seattle to the British Columbia and Alaska Halibut banks; that thereafter, pursuant to the terms of said agreement, said plaintiff and said defendant on board in said respective capacities and said other fishermen, as a joint and common fishing venture, embarked upon said voyage, all of the members of the crew of said vessel being principals and partners in a joint undertaking, no one of said persons being an employer, and no one of said persons being an employee on and during said voyage.

II.

That at the time of entering into said agreement, the plaintiff herein represented himself to be, and on information and belief defendants allege that he was, an experienced engineer and halibut fisherman, and as such knew, or should have known, all of the ordinary and usual and customary dangers and hazards to be encountered upon said joint fishing venture.

III.

That on said 13th day of May, 1927, the plaintiff herein, in performing his joint and common services on board said vessel, was stationed in the waist of said vessel, adjacent to said roller, to tend said ground line, said leaders and halibut hooks and remove the fish therefrom, if any, as said ground line and gear was hove aboard said vessel and as said line and gear came over said roller.

IV.

That all of the dangers, hazards and risks encountered by said plaintiff at said time and place were the usual, ordinary and customary dangers and hazards and risks customarily and necessarily encountered by fishermen acting in plaintiff's capacity; that all of said dangers, hazards and risks were open, obvious and apparent, were, at and from the inception of said voyage, fully known, seen, understood and appreciated by plaintiff at all of said times and that all of said risks, hazards and dangers were voluntarily assumed by said plaintiff.

Further answering said complaint and by way of a SECOND SEPARATE AND AFFIRMATIVE DEFENSE thereto, defendants, and each of them, allege:

I.

Re-allege paragraphs I to III inclusive of their first affirmative defense herein as though here reiterated and restated in full.

II.

That custom and usage and the care which should have been exercised by an ordinarily careful and prudent man of plaintiff's experience and ability under similar circumstances required, that, to properly and safely tend said ground line, plaintiff should have used both hands to keep slack in the leaders by which said halibut hooks were attached to said ground line in order to keep said hooks free, disentangled and to prevent the same from becoming fouled or catching

upon each other, the ground line or the hull, fittings and appurtenances of said vessel; that said vessel was equipped with a hand-lever placed immediately adjacent to said roller and within easy reach and for the use of the fishermen properly tending said ground line at said roller, the purpose and use of said lever being to stop said winch in the event, as frequently happened in the customary, normal and ordinary use of such fishing gear, a hook or hooks might become caught, snagged or entangled while said ground line was being taken aboard over said roller, that then, and in that event, said winch could be instantly stopped by the use of such lever, and custom and usage and the care which should have been exercised by an ordinarily careful and prudent man of plaintiff's experience and ability, under similar circumstances, required that said winch and said ground line should have been stopped by plaintiff by using said lever until said hook or hooks were freed or disentangled, but that notwithstanding all of the foregoing, on said 13th day of May, 1927, plaintiff negligently and carelessly, and with wilful disregard for his own safety, failed, refused and neglected to tend said line, said leaders and said hooks with both hands, and to so use said winch lever to stop said winch and ground line, but, on the contrary, plaintiff negligently and carelessly attempted to tend said line and gear by using only one hand, and negligently and carelessly failed, refused and neglected to stop said winch and said ground line by means of said lever, and allowed said hooks to be broken or torn loose and disentangled

by means of the power and strain applied thereto from said winch; that if, in fact, plaintiff suffered or sustained any of the injuries alleged in said complaint, said injuries, and all of the consequences thereof, were the natural and proximate result of said negligence and carelessness on the part of plaintiff herein in the foregoing respects, and any and all damage and/or injury, if any, sustained by plaintiff, as alleged in said complaint, or otherwise, was due solely and proximately to the negligence and carelessness and want of due regard of plaintiff for his own safety.

FURTHER ANSWERING said complaint, and by way of a THIRD, SEPARATE AND AFFIRMATIVE DEFENSE thereto, defendants, and each of them, allege as follows:

I.

Defendants reiterate and re-allege paragraphs I, II, III and IV of their first affirmative defense hereto, and paragraph II of their second affirmative defense, as though herein set out fully and at large.

II.

That said vessel was at all times in plaintiff's complaint and in this amended answer mentioned, in all respects seaworthy as to hull, engines and equipment, and properly and sufficiently officered, manned, equipped and furnished, and well and sufficiently equipped and supplied with suitable engines, tackle, apparel, appliances and furniture, all in good order and condition, and suitable for the business in which said vessel was engaged upon said voyage; that de-

fendant Axel Langnes, the owner of said vessel, at the time of and at all times prior to the occurrence of the accident alleged by plaintiff to have resulted in his injury on board said vessel, exercised and had exercised due care and diligence to make said vessel in all respects seaworthy, properly and efficiently officered, manned, equipped, supplied and furnished, and well and sufficiently fitted and supplied with suitable engines, machinery, tackle, apparel, appliances and furniture as aforesaid; that any injury, loss or damage which may have been sustained by plaintiff by reason of any matters or things alleged in the complaint herein, were occasioned solely and proximately by the negligence and carelessness of plaintiff, and without any knowledge and/or privity of defendants, or either of them, and defendants are entitled to limit their liability, if any, according to law.

III.

That defendants desire to claim the benefits of Sections 4283, 4284 and 4285 of the Revised Statutes of the United States, and the acts amendatory thereof and supplemental thereto in this proceeding, and that if, in fact, plaintiff may be or may be found to be entitled to recover in this proceeding in any amount, that such recovery may be limited to the amount or value of said diesel halibut vessel "Aloha," her boats, engines, tackle, apparel, furniture, fittings, appliances and appurtenances at the end of the voyage mentioned in said complaint, and in this amended answer, plus the amount or value of pending freight or other reve-

nue earned by said vessel upon said voyage; that defendants allege the value of said vessel at the end of said voyage, her boats, engines, tackle, apparel, furniture, fittings, appliances and appurtenances to be in the amount of five thousand dollars ($5,000.00), and further allege that there was no freight earned or pending from the use or operation of said vessel, during said voyage, but that at the close of said voyage the share and earnings or proceeds of said voyage, being the pro rata share upon a lay basis of the sale value of the fish then and at the termination of said voyage on board, was earned and owing to said vessel in the amount of $189.88, and that the share of such value of said fish then and at the termination of said voyage, earned by and owing to defendant Axel Langnes, was the sum of eighty-seven and 61/100 dollars ($87.61).

WHEREFORE, having fully answered, defendants pray that plaintiff's complaint herein be dismissed, and that they, and each of them, do have and recover of and from the plaintiff their costs and disbursements herein, or

In the alternative that any recovery by plaintiff herein against these defendants, or either of them, be limited to the value of said vessel "Aloha," her engines, boats, tackle, apparel, furniture, fittings, appliances and appurtenances, at the close of the voyage mentioned in the complaint, and this amended answer herein, plus the sum or amount of any pending

freight or other revenue, if any, earned by said vessel during said voyage.

BRONSON, JONES & BRONSON,
Attorneys for Defendants.

STATE OF WASHINGTON,
COUNTY OF KING, ss.

AXEL LANGNES, being first duly sworn, on oath deposes and says: That he is one of the Defendants named in the above entitled proceeding; that he has read the above and foregoing amended answer, knows the contents thereof and believes the same to be true.

AXEL LANGNES.

Subscribed and sworn to before me this 10th day of January, 1932.

R. E. BRONSON,
Notary Public in and for the State of Washington, residing at Seattle.

(SEAL)

(Title of Court and Cause)

REPLY

Replying to the First Affirmative Defense in the defendants' Answer the plaintiff admits, denies and alleges as follows:

I.

He denies each and every allegation of paragraph I thereof, except that he admits that he, as well as the other members of the crew of said vessel, was to be

paid for his services as engineer and fisherman by receiving a share of the fish caught.

II.

He denies each and every allegation of paragraph III, except that he admits that at the time of his injury the plaintiff was stationed in the waist of the vessel adjacent to the roller to tend the ground line, leaders and hooks and remove fish therefrom.

III.

He denies each and every allegation of paragraph IV.

Replying to the Second Affirmative Defense the plaintiff admits, denies and alleges as follows:

I.

He replies to paragraphs I and III of the First Affirmative Defense as hereinabove set forth.

II.

He denies each and every allegation of paragraph II of said Second Affirmative Defense, except that he admits that said vessel was equipped with a hand lever placed adjacent to the roller for the purpose of stopping the winch whenever necessary.

Further replying to the First Affirmative Defense in said Answer the plaintiff alleges:

I.

That in the afternoon of the 11th day of May, 1927, while also engaged in tending the ground line, ginions and fish hooks, some of the halibut hooks caught on

the back stay chain plate in such a manner as to cause the plaintiff to feel alarmed for his safety, whereupon he complained to the defendant Axel Langnes of said danger. That thereupon said Axel Langnes directed the plaintiff to keep as much slack as possible on the ginions as they were hauled over the roller and stop the winch as soon as the hook caught and assured him that if he did so there would be no danger of being injured by flying hooks.

That thereafter, relying upon the defendant Axel Langnes' superior acquaintance with the gear on said vessel, and upon his judgment and authority as the master of said vessel, the plaintiff continued with his work, endeavoring all the time to obey the instructions of the defendant, but that the plaintiff was injured as alleged in his Complaint within one-half an hour after he commenced work in tending the said ground line on the next fishing day following said conversation.

WHEREFORE, having fully replied, the plaintiff demands judgment in accordance with the prayer of his Complaint.

G. F. VANDERVEER,
Attorney for Plaintiff.

STATE OF WASHINGTON,
COUNTY OF KING, ss.

WINFIELD A. GREEN, being first duly sworn on oath, deposes and says: That he is the plaintiff in the above entitled action; That he has read the fore-

going Reply, knows the contents thereof and believes the same to be true.

WINFIELD A. GREEN.

Subscribed and sworn to before me this 6th day of January, 1928.

G. F. VANDERVEER,
Notary Public in and for the State of Washington, residing at Seattle.

(SEAL)

(Title of Court and Cause)

REPLY

Replying to the defendants' amended answer, the plaintiff admits, denies and alleges as follows:

I.

Replying to paragraph II. of the Amended Answer, the plaintiff denies each and every affirmative allegation therein attempted to be pleaded by way of an admission.

II.

The plaintiff denies each and every allegation of the First Affirmative Defense in the defendants' Answer.

III.

He denies each and every allegation of the Second Affirmative Defense.

IV.

He denies each and every allegation contained in paragraph II. of the Third Affirmative Defense.

V.

Replying to paragraph III. of the Third Affirmative Defense, the plaintiff admits the legal right of the defendants to claim, in this action, the benefits of Sections 4283, 4284 and 4285 of the Revised Statutes of the United States and the acts amendatory thereof and supplemental thereto, but denies that the defendants are entitled to limit their liability unless they sustain the burden of proving the allegations of paragraph II. of said Third Affirmative defense relating to the seaworthiness of the "ALOHA" and the lack of knowledge and/or privity of the defendants. Plaintiff admits that at the completion of the voyage referred to in the pleadings, the "ALOHA" was worth a net sum of $5,000.00 for limitation purposes, in the event that it should be found the defendants are in fact entitled to a limitation of their liability.

WHEREFORE, having fully replied, the plaintiff demands judgment in accordance with the prayer of his complaint.

VANDERVEER & BASSETT,
Attorneys for Plaintiff.

STATE OF WASHINGTON,
COUNTY OF KING, ss.

WINFIELD A. GREEN, being first duly sworn, upon his oath deposes and says: That he is the plaintiff named in the above entitled action; that he has read the foregoing Reply, knows the contents thereof and believes the same to be true.

WINFIELD A. GREEN.

Subscribed and sworn to before me this 21st day of January, 1932.

SAMUEL B. BASSETT,
Notary Public in and for the State
(SEAL) *of Washington, residing at Seattle.*

(Title of Court and Cause)

COMPLAINT

The plaintiff complains of the defendants and for cause of action alleges:

I.

That at all the times hereinafter mentioned the defendants were, and still are, husband and wife; were the owners of the Gas Fishing Schooner "ALOHA," and employed the plaintiff as an engineer and fisherman for a fishing voyage of said vessel to the halibut banks at Cape St. James, Queen Charlotte Island, British Columbia.

II.

That in fishing for halibut in said banks the defendants employed a long heavy ground line, to which, at intervals of thirteen feet, heavy halibut fish hooks were attached by five-foot fishing lines and whenever it was desired to raise the ground line for the purpose of removing fish, one end was passed around a power-driven capstan located amidships by means of which the line was then hauled aboard the vessel over a large fourteen-inch roller located on the starboard rail. That the starboard back stay was secured to a heavy metal strap bolted in a vertical position to the

side of the vessel in such a manner that it was raised about half an inch above the planking, and the defendants negligently placed the roller, over which the ground line was hauled aboard said vessel, within three or four inches of said strap, and negligently failed to cover said strap or take any other precaution to keep the fish hooks from catching on the same, as a natural and proximate result whereof, as the defendants well knew, or in the exercise of reasonable care should have known, there was danger that, as the ground line was hauled inboard across said roller, the halibut hooks would catch on said back stay strap and, when torn loose by the winch, would fly back into the faces of the fishermen who were raising and stowing the line.

III.

That on the 13th day of May, 1927, as a natural and proximate result of the defendants' aforesaid negligence, while the plaintiff and other fishermen were engaged in hauling the ground line aboard said vessel in the manner hereinabove described, one of the fish hooks caught on said back stay strap and, when torn loose therefrom by the capstan, it flew back into the plaintiff's face, striking him in the left eye and destroying the sight thereof.

IV.

That at the time of receiving said injuries the plaintiff was an able bodied man of the age of forty-nine years, capable of earning $200.00 per month as a marine engineer and fisherman. That as result of said

injuries he was totally incapacitated from performing any gainful labor for a period of three months to his damage in the sum of $720.00; that the sight of his left eye has been permanently destroyed; that the plaintiff is informed and believes, and therefore alleges that his right eye will be permanently impaired; he has suffered intense pain from said injury and that his left eye has become shrunken and unsightly, causing him to suffer intense shame and humiliation, to his damage in the total sum of $25,000.00.

WHEREFORE, the plaintiff demands judgment against the defendants, and each of them, in the sum of $25,000.00, together with his costs and disbursements herein.

G. F. VANDERVEER,
Attorney for Plaintiff.

STATE OF WASHINGTON,
COUNTY OF KING, ss.

WINFIELD A. GREEN, being first duly sworn on oath, deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

WINFIELD A. GREEN.

Subscribed and sworn to before me this 1st day of October, 1927.

ROY DE GRIEF,
Notary Public in and for the State of Washington, residing at Seattle.

(SEAL)

(Title of Court and Cause)

ANSWER

Comes now the defendants, Axel Langnes and Ragna Langnes, husband and wife, and answering the complaint of the plaintiff herein, admit, deny and allege as follows:

I.

Answering paragraph I, defendants admit that, at all times in said complaint mentioned, defendants were and still are husband and wife. Admit that defendant, Axel Langnes, was the owner of said motor halibut vessel "Aloha" and the whole thereof. Deny that defendant, Ragna Langnes, was the owner of said vessel, or any part thereof. Deny that defendants, or either of them, employed the plaintiff in any capacity on board said vessel as alleged in said paragraph.

II.

Answering paragraph II, defendants deny that they employed a heavy ground line, as alleged in said paragraph, but admit that defendant, Axel Langnes, the plaintiff herein and all other fishermen on board said vessel, jointly and as partners in a common venture and undertaking, employed a long heavy ground line to which, at intervals of thirteen feet, halibut fish hooks were attached by means of five-foot leaders or ginions, and, that, whenever it was desired to raise the said ground lines for the purpose of removing fish, one end thereof was led to a power driven capstan or windlass by means of which the said ground

line with its attachments was then hove aboard said vessel over a roller fixed to the starboard rail. Admit that the main starboard back stay was secured to the hull of said vessel by means of a metal chain plate secured to the bulwark and side of said vessel in the usual and customary manner for such vessels. Deny that the defendants, or either of them, negligently placed the said roller in any respect on said vessel. Deny that said roller, or any roller over which said ground line was led, was within three or four inches of said strap back stay or chain plate, but admit that the nearest roller over which said ground line passed was within six inches of said chain plate. Further answering said paragraph, defendants, and each of them, deny each and every other allegation, matter and thing in said paragraph contained.

III.

Answering paragraph III, defendants deny the same and each and every allegation, matter and thing in said paragraph contained.

IV.

Answering paragraph IV, defendants deny each and every allegation, matter and thing in said paragraph contained, especially denying that plaintiff has been or is damaged in the sum of Twenty-five Thousand ($25,000.00) Dollars, or any other sum or amount whatsoever, or at all.

Further answering said complaint and by way of a FIRST AFFIRMATIVE DEFENSE thereto, defendants, and each of them, allege as follows:

I.

That prior to embarking upon the voyage mentioned in the complaint herein, the defendant, Axel Langnes, the owner of the whole of said motor halibut vessel "Aloha," entered into an oral agreement with the plaintiff herein and certain other fishermen by the terms of which said plaintiff and said defendant and said other fishermen agreed to embark upon a joint and common fishing venture, the defendant, Axel Langnes, to act as master and fisherman, the plaintiff herein to act as engineer and fisherman, and the proceeds and profit of said voyage to be divided among said persons and fishermen on the basis of shares pursuant to the usual and customary practice among halibut fishermen from the Port of Seattle to the British Columbia and Alaska halibut banks; that thereafter, pursuant to the terms of said agreement, said plaintiff and said defendant on board in said respective capacities and said other fishermen, as a joint and common fishing venture, embarked upon said voyage, all of the members of the crew of said vessel being principals and partners in a joint undertaking, no one of said persons being an employer, and no one of said persons being an employee on and during said voyage.

II.

That at the time of entering into said agreement, the plaintiff herein represented himself to be, and on information and belief defendants allege that he was, an experienced engineer and halibut fisherman and as

such knew, or should have known, all of the ordinary and usual and customary dangers and hazards to be encountered upon said joint fishing venture.

III.

That on the 13th day of May, 1927, and at all other times on and during said voyage said vessel "Aloha" was properly officered, manned and equipped, was seaworthy in all respects and was suitably supplied and fitted with all proper appliances in good order and condition as and where used and placed on board said vessel; that on said 13th day of May, 1927, the plaintiff herein, in performing his joint and common services on board said vessel, was stationed in the waist of said vessel, adjacent to said roller, to tend said ground line, said leaders and halibut hooks and remove the fish therefrom, if any, as said ground line and gear was hove aboard said vessel and as said line and gear came over said roller.

IV.

That all of the dangers, hazards and risks encountered by said plaintiff at said time and place were the usual, ordinary and customary dangers and hazards and risks customarily and necessarily encountered by fishermen acting in plaintiff's capacity; that all of said dangers, hazards and risks were open, obvious and apparent, were, at and from the inception of said voyage, fully known, seen, understood and appreciated by plaintiff at all of said times and that all of said risks, hazards and dangers were voluntarily assumed by said plaintiff.

Further answering said complaint and by way of a SECOND SEPARATE AND AFFIMATIVE DEFENSE thereto, defendants, and each of them, allege:

I.

Re-allege paragraphs I to III inclusive of their first affirmative defense herein as though here reiterated and restated in full.

II.

That custom and usage and the care which should have been exercised by an ordinarily careful and prudent man of plaintiff's experience and ability under similar circumstances required, that, to properly and safely tend said ground line, plaintiff should have used both hands to keep slack in the leaders by which said halibut hooks were attached to said ground line in order to keep said hooks free, disentangled and to prevent the same from becoming fowled or catching upon each other, the ground line or the hull, fittings and appurtenances of said vessel; that said vessel was equipped with a hand-lever placed immediately adjacent to said roller and within easy reach and for the use of the fishermen properly tending said ground line at said roller, the purpose and use of said lever being to stop said winch in the event, as frequently happened in the customary, normal and ordinary use of each fishing gear, a hook or hooks might become caught, snagged or entangled while said ground line was being taken aboard over said roller, that then, and in that event, said winch could be instantly stopped by the use of such lever, and custom and

usage and the care which should have been exercised by an ordinarily careful and prudent man of plaintiff's experience and ability, under similar circumstances, required that said winch and said ground line should have been stopped by plaintiff by using said lever until said hook or hooks were freed or disentangled, but that notwithstanding all of the foregoing, on said 13th day of May, 1927, plaintiff negligently and carelessly, and with wilful disregard for his own safety failed, refused and neglected to tend said line, said leaders and said hooks with both hands, and to so use said winch lever to stop said winch and ground line, but, on the contrary, plaintiff negligently and carelessly attempted to tend said line and gear by using only one hand, and negligently and carelessly failed, refused and neglected to stop said winch and said ground line by means of said lever, and allowed said hooks to be broken or torn loose and disentangled by means of the power and strain applied thereto from said winch; that if, in fact, plaintiff suffered or sustained any of the injuries alleged in said complaint, said injuries, and all of the consequences thereof, were the natural and proximate result of said negligence and carelessness on the part of plaintiff herein in the foregoing respects, and any and all damage and/or injury, if any, sustained by plaintiff, as alleged in said complaint, or otherwise, was due solely and proximately to the negligence and carelessness and want of due regard of plaintiff for his own safety.

WHEREFORE, having fully answered, defendants pray that plaintiff's complaint herein be dismissed,

and that they, and each of them, do recover of and from plaintiff their costs and disbursements herein.

G. E. STEINER,
BRONSON, JONES & BRONSON,
Attorneys for Defendants.

STATE OF WASHINGTON,
COUNTY OF KING, ss.

AXEL LANGNES, being first duly sworn, on oath deposes and says: That he is one of the defendants named in the above entitled action; that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

(Signed) AXEL LANGNES.

Subscribed and sworn to before me this 29th day of November, 1927.

R. E. BRONSON,
Notary Public in and for the State
(SEAL) *of Washington, residing at Seattle.*

KING COUNTY SUPERIOR COURT

No. 205037

APPEARANCE DOCKET, FEE BOOK AND RECORD OF RECEIPTS AND DISBURSEMENTS

Attorneys	*Title of Cause*
G. F. Vanderveer G. E. Steiner—Bronson, Jones & Bronson.	Winfield A. Green, *Plff.* vs. Axel Langnes and Ragna Langnes, his wife, *Defts.*

Nature of Action—DAMAGES

Date 1927	*No. of Paper*	*Dept. No.*
Nov. 23	1	Filed Summons and Complaint
Nov. 23	2	Filed Demand for Jury
Nov. 23	3	Filed Notice and Note for Trial Dkt.
Nov. 30	4	Filed Answer
Dec. 24		Ent't Cause set Feb. 6
1928		
Jan. 10	5	Filed Reply
Feb. 4		Ent'd Cause continued to March 1
Mar. 1		Ent'd Cause stricken
Mar. 8	6	Filed Notice and Note Trial Dkt.
Mar. 13	7	Filed Copy of Restraining Order issued by U. S. District Court

1932

Jan.	4	8	Filed Notice
Jan.	5	9	Filed Order dissolving restraining order
Jan.	8		Ent'd Mo. for special setting, granted
Jan.	11		Ent'd Cause set Feb. 2,
Jan.	21	10	Filed Reply
Jan.	23	11	Filed Amended Answer

(Title of Court and Cause)

I, ABE N. OLSON, County Clerk of King County, and ex-officio Clerk of the Superior Court of the State of Washington for the County of King, do hereby certify that I have compared the foregoing copy with the original AMENDED ANSWER — REPLY — REPLY—COMPLAINT and ANSWER, and ALL DOCKET ENTRIES in the above entitled cause as the same appears on file and of record in my office, and the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and seal of the said Superior Court, at my office in Seattle, this 25th day of January, 1932.

ABE N. OLSON, *Clerk.*

(SEAL) *By* S. R. BATTENFIELD, *Deputy.*

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Jan. 27, 1932.

ED. M. LAKIN, *Clerk.*
By S. COOK, *Deputy.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

IN THE MATTER OF THE PETITION OF AXEL LANGNES, sole owner of the Diesel halibut vessel "ALOHA," her engines, etc., for exemption from, or limitation of, liability.

IN ADMIRALTY
No. 12189

PETITION FOR REHEARING ON PETITIONER'S MOTION FOR RESTRAINING ORDER

COMES NOW Winfield A. Green, the claimant in the above entitled cause, and moves the Court for a rehearing on petitioner's motion for a restraining order on the following grounds:

1. That petitioner's said motion is predicated upon the allegation that the petitioner's right to a limitation of his liability has been drawn into controversy in the common law action pending in the Superior Court, the defendant in said action having claimed in his amended answer the right to a limitation of his liability and the plaintiff having denied the same in his amended reply.

2. That subsequent to the hearing on said motion for a restraining order, the claimant herein filed a second amended reply, which, insofar as it affects the allegations in defendant's amended answer concerning their right to a limitation of liability, is as follows:

"Replying to the Third Affirmative Defense in the defendants' Amended Answer, the plaintiff alleges that all of the matters and things therein pleaded and the issue thereby tendered, have been fully and fairly litigated in the United States Circuit Court of Appeals for the Ninth Circuit, in that certain cause No. 5877, entitled "WINFIELD A. GREEN, Claimant of the Diesel Halibut Vessel "ALOHA," her Engines, etc., Appellant, vs. AXEL LANGNES, Owner, Appellee," (reported in 35 F. (2d) 447), and the final judg ment of said Court, holding that the Defendants herein are not entitled to a limitation of their liability is *res adjudicata* as to said issue."

3. The memorandum decision filed by this Court on plaintiff's motion for said restraining order assumes that the petitioner's right to a limitation of liability has not been litigated, whereas, in truth and in fact, said issue has been fully litigated in this Court and finally determined by the United States Circuit Court of Appeals for the Ninth Circuit, in that certain cause No. 5877, entitled "WINFIELD A. GREEN, Claimant of the Diesel Halibut Vessel "ALOHA," her Engines, etc., Appellant, vs. AXEL LANGNES, Owner, Appellee" (reported in 35 F. (2d) 447), and the final judgment of said Court holding that the petitioner herein is not entitled to a limitation of his liability is *res adjudicata* as to said issue.

4. The foregoing matters were not presented to the Court by counsel during the oral argument and

were not considered by the Court in its memorandum decision.

This motion is based upon the affidavit of Samuel B. Bassett and a copy of plaintiff's second amended reply, which has been filed in the State Court, and upon the decision of the United States Circuit Court of Appeals for the Ninth Circuit in Winfield A. Green vs. Axel Langnes (35 F. (2d) 447).

WINTER S. MARTIN and
SAMUEL B. BASSETT,
Proctors for Claimant.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Feb. 4, 1932.

ED. M. LAKIN, *Clerk.*
By T. W. EGGER, *Deputy.*

(Title of Court and Cause)

AFFIDAVIT OF SAMUEL B. BASSETT

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF WASHINGTON,
NORTHERN DIVISION, ss.

SAMUEL B. BASSETT, being first duly sworn, on oath deposes and says: That he is one of the proctors for the claimant in the above entitled cause and makes this affidavit in support of claimant's petition for a rehearing on petitioner's motion for a restraining order. That following the filing of the memorandum decision of this court on said motion, plaintiff applied to the Superior Court of the State of Wash-

ington for King County for leave to file a second amended reply in the case of Winfield A. Green vs. Axel Langnes and Ragna Langnes, his wife, Cause No. 205037, a copy of which is attached hereto and made a part hereof by this reference.

SAMUEL B. BASSETT.

Subscribed and sworn to before me this 4th day of February, 1932.

ROY DEGRIEF,
Notary Public in and for the State
(SEAL) *of Washington, residing at Seattle.*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

WINFIELD A. GREEN, *Plaintiff,*

vs.

AXEL LANGNES and RAGNA LANGNES, his wife, *Defendants.*

No. 205037

SECOND AMENDED REPLY

Replying to the defendants' Amended Answer, the plaintiff admits, denies and alleges as follows:

I.

Replying to paragraph II, of the Amended Answer, the plaintiff denies each and every affirmative allegation therein attempted to be pleaded by way of an admission.

Replying to the FIRST AFFIRMATIVE DEFENSE in the defendants' Amended Answer, plaintiff admits, denies and alleges as follows:

I.

He denies each and every allegation of paragraph I, thereof, except that he admits that he, as well as the other members of the crew of said vessel, was to be paid for his services as engineer and fisherman by receiving his share of the fish caught.

II.

He denies each and every allegation of paragraph III, except that he admits that at the time of his injury, the plaintiff was stationed in the waist of the vessel adjacent to the roller to tend the ground line, leaders and hooks and remove fish therefrom.

III.

He denies each and every allegation of paragraph IV.

Further replying to the FIRST AFFIRMATIVE DEFENSE in said Amended Answer, plaintiff alleges:

I.

That in the afternoon of the 11th day of May, 1927, while also engaged in tending the ground line, ginions and fish hooks, some of the halibut hooks caught on the back stay chain plate in such a manner as to cause the plaintiff to feel alarmed for his safety, whereupon he complained to the defendant, Axel Langnes, of said danger. That thereupon said Axel Langnes directed the plaintiff to keep as much slack as possible on the ginions as they were hauled over the roller and stop the winch as soon as the hook

caught and assured him that if he did so there would be no danger of being injured by flying hooks. That thereafter, relying upon the defendant, Axel Langnes' superior acquaintance with the gear on said vessel, and upon his judgment and authority as the master of said vessel, the plaintiff continued with his work, endeavoring all the time to obey the instructions of the defendant, but that the plaintiff was injured as alleged in his Complaint within one-half an hour after he commenced work in tending the said ground line on the next fishing day following said conversation.

Replying to the SECOND AFFIRMATIVE DEFENSE in the defendants' Amended Answer the plaintiff denies each and every allegation therein contained.

Replying to the THIRD AFFIRMATIVE DEFENSE in the defendants' Amended Answer, the plaintiff alleges that all of the matters and things therein pleaded and the issue thereby tenderd, have been fullv and fairly litigated in the United States Circuit Court of Appeals for the Ninth Circuit, in that certain cause No. 5877, entitled "WINFIELD A. GREEN, Claimant of the Diesel Halibut Vessel "ALOHA," her Engines, etc., Appellant, vs. Axel Langnes, Owner, Appellee" (reported in 35 F. (2) 447), and the final judgment of said Court, holding that the defendants herein are not entitled to a limitation of their liability is *res adjudicata* as to said issue.

WHEREFORE, having fully replied, plaintiff demands judgment in accordance with the prayer of his Complaint.

WINTER S. MARTIN and
SAMUEL B. BASSETT,
Attorneys for Plaintiff.

STATE OF WASHINGTON,
COUNTY OF KING, ss.

WINFIELD A. GREEN, being first duly sworn, upon his oath, deposes and says: That he is the plaintiff named in the above entitled action; that he has read the foregoing Second Amended Reply, knows the contents thereof and believes the same to be true.

WINFIELD A. GREEN.

Subscribed and sworn to before me this 3rd day of February, 1932.

SAMUEL B. BASSETT,
Notary Public in and for the State
(SEAL) *of Washington, residing at Seattle.*

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Feb. 4, 1932.

ED. M. LAKIN, *Clerk.*
By T. W. EGGER, *Deputy.*

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

IN THE MATTER OF THE PETITION OF AXEL LANGNES, sole owner of the Diesel halibut vessel "ALOHA," her engines, etc., for exemption from, or limitation of, liability.

IN ADMIRALTY

No. 12189

DECISION (On restraining order, etc.)

February 2, 1932

Vanderveer & Bassett, and Winter A. Martin, for Winfield A. Green, Claimant;

Bronson, Jones & Bronson, for Petitioner.

NETERER, *District Judge*:

The suitor in the state court brought a common law action to recover damages for personal injuries sustained while being employed as engineer and fisherman on the gas fishing schooner ALOHA, while fishing on the halibut banks at Cape St. James, Queen Charlotte Island, British Columbia, against the petitioner, and prayed $25,000.00 damages. By petition, limitation was prayed in this court and restraining order issued against proceeding in the state court, and motion to dissolve the restraining order was denied. Such proceedings were had that the decree entered was reversed by the Supreme Court (Langnes vs. Green, 282 U. S. 531), but this court was directed to retain the cause as a matter of precaution, since the

"state court's entire lack of admiralty jurisdiction," but vested with the suitor's right in the state court a common law remedy. The Judiciary Act (Section 24, J. C., Par. 3), saves to suitors in all cases the right of a common law remedy where the common law is competent to give it, and as a consequence the right of trial by jury, a right of common law proceeding. This court has retained jurisdiction of the limitation proceeding, but dissolved the restraining order, pursuant to the Supreme Court decision, to permit the suitor to pursue his common law remedy in the state court.

The petitioner, as defendant in the state court, has by leave of the court filed an amended answer, by which he claims the benefit of the United States limitation statute to limit his liability, if any, to the value of the schooner, which, it is agreed, is Five Thousand Dollars. The suitor, in reply, admits the right of benefit of the limitation of law statute, but places in issue the seaworthiness of the schooner and lack of knowledge or privity of the defendants. This, at once, raises the right to limited liability, of which this court has exclusive jurisdiction, and which question is pending before this court in this proceeding, and as stated by the Supreme Court, "the state court has entire lack of jurisdiction." 282 U. S. 531. And as stated by Judge Brawley, in THE LOTTA, 150 Fed. 219, which case is approved by the Supreme Court in 282 U. S. 531, supra: "All that the petitioner can fairly claim is that he should not be subjected to personal judgment for an indefinite amount and beyond the value of the LOTTA."

At page 223, in THE LOTTA, supra, the court said: "There is no reason to doubt that this proper defense may be availed of in the state court * * *." And on page 222: "The owner of the vessel, therefore, can by answer in the state court set up as a defense that he is not liable beyond the value of the vessel, and that value may be determined as appropriately and as easily in that court as in this." And again: "The limit of recovery is the value of the owner's interest in the ship and freight, and it seems to be clear that so far as the purposes of the Act of 1851 may be well accomplished by answer in the state court by setting up a limited liability. If the plaintiff should recover a judgment there he would be entitled to the value of the ship. * * * All that the petitioner can fairly claim is that he should not be subject to a personal judgment for an indefinite amount and beyond the value of his interest in THE LOTTA and her freight."

Two issues are in the case: One within the jurisdiction of the state court, where common law remedy is invoked; and the other, the petitioner's right to limit liability, of which the state court has no jurisdiction, but which is exclusively in this court; but if the right to limited liability is brought into question in the state court it will "bring it within the exclusive power of a court of admiralty," as said by the Supreme Court in THE ALOHA (Langnes v. Green, 282 Fed. 531).

The state court has no power to hear any matter with relation to the right to limitation of liability, and cannot hear proofs as to seaworthiness; nor may the

proctors for the suitor claim and urge that the burden of seaworthiness of the schooner must be established in the state court. Seaworthiness belongs solely to admiralty. THE LOTTA, supra; THE ALOHA, supra.

To pursue common law remedy in the state court, the suitor must admit the right to limit liability, thus withdrawing from the case any federal question, and his recovery, if any, will be limited to the value of the schooner; and if issue is taken upon the right to limit, then this court has jurisdiction of the entire controversy.

The motion of petitioner for restraining order must be granted, unless the suitor admits the right to limit liability, thus eliminating the federal question; the jurisdiction of this court being exclusive, the restraining order must issue and limitation of liability proceed in this court; but if the right is conceded, the restraining order will be denied, and recovery limited to the value of the schooner, either admitted or proven in the state court.

The election of the suitor may be made by ten o'clock Monday morning, February 7, in this court, to the effect that he has withdrawn the issue as to right to limit the liability in the state court; or, declining to do so, in which event the restraining order will issue.

NETERER,
United States District Judge.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Feb. 2, 1932.

ED. M. LAKIN, *Clerk.*
By T. W. EGGER, *Deputy.*

(Title of Court and Cause)

RESTRAINING ORDER

This matter having come on regularly before the undersigned, one of the judges of the above entitled court, on February 1, 1932, upon motion of petitioner, Axel Langnes, for issuance of a restraining order, petitioner appearing and being represented by his proctors, Messrs. Bronson, Jones & Bronson, and claimant Winfield A. Green appearing and being represented by his proctors, Messrs. Vanderveer & Bassett and Winter A. Martin, and the court having heard and considered said motion, and having heard and considered the arguments of respective proctors upon the same, and having hertofore, on the 2nd day of February, 1932, entered its memorandum decision upon said motion; and

It appearing to the court from the affidavit of Samuel B. Bassett filed herein subsequent to the entry of said memorandum decision, that claimant has neither admitted petitioner's right to limit his liability in that certain proceeding pending in the Superior Court of the State of Washington, for King County, in cause number 205037, wherein claimant herein is plaintiff and petitioner herein and wife are defendants, as required by the said memorandum de-

cision of this court, nor withdrawn issue upon said right from said State Court; and

It further appearing from said affidavit and the exhibit thereto attached that said claimant in said state court proceeding still controverts, questions and disputes petitioner's right to limit his liability to the value of his vessel and her pending freight in said state court proceeding; now, therefore, on motion of proctors for petitioner, it is

HEREBY ORDERED that the further prosecution of the action of said Winfield A. Green now pending in the Superior Court of the State of Washington, for King County, being cause number 205037, therein against the petitioner herein, and the institution and prosecution of any and all suits or legal proceedings of any nature or description whatsoever, except in this limitation of liability proceeding, against the petitioner or the said vessel in respect of any claim arising out of or connected with the occurrence mentioned in said petition be, and the same are hereby stayed and restrained until the hearing and determination of this proceeding, or the further order of this court; and

It is further ORDERED that the service of this order as a restraining order may be made within this district by delivering a certified copy hereof to the person or persons to be restrained or their respective proctors or attorneys of record in any pending proceeding or in any other district of the United States, or the territories thereof, by the United States Mar-

shal, for such other district or territory by delivering a certified copy of this order to the person or persons to be restrained, or to their respective proctors or attorneys, in case action, suit or other legal proceedings have been or are taken therein, and also file a copy hereof in the office of the Clerk of the Superior Court of the State of Washington, for King County.

Done in Open Court this 8th day of February, 1932.

JEREMIAH NETERER,
U. S. District Judge.

To all of which claimant excepts and exception is allowed.

NETERER, *Judge.*

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Feb. 8, 1932.

ED. M. LAKIN, *Clerk.*
By S. COOK, *Deputy.*

No. 12189a

(MANDATE)

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES OF AMERICA, To the Honorable the Judges of the District Court of the United States for the Western District of Washington,

(SEAL)

GREETING:

Whereas, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between Winfield A. Green, Claimant of the Diesel Halibut Vessel "Aloha," her engines, etc., Appellant, and Axel Langnes, Owner, Appellee, No. 5877, wherein the decree of the said Circuit Court of Appeals, entered in said cause on the 21st day of October, A. D. 1929, is in the following words, viz:

"This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

"On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that this cause be, and hereby is, remanded to the said District Court with directions to dismiss the case for want of jurisdiction to limit appellee's liability, without determination of the question of negligence of appellee or appellant and without passing upon the affirmative defenses to the claim of negligence advanced herein by

the appellee, with costs in favor of the appellant and against the appellee.

It is further ordered, adjudged and decreed by this Court, that the appellant recover against the appellee for his costs herein expended, and have execution therefor."

as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the SUPREME COURT OF THE UNITED STATES by virtue of a writ of certiorari, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and thirty, the said cause came on to be heard before the said SUPREME COURT, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said United States Circuit Court of Appeals and the decree of the District Court of the United States for the Western District of Washington, in this cause, be, and the same are hereby, reversed with costs; and that the said Appellee, Axel Langnes, Owner, etc., recover against the said appellant Sixty-four Dollars and Seventy Cents for his costs herein expended and have execution therefor.

And it is further ordered, That this cause be, and the same is hereby, remanded to the District Court of the United States for the Western District of

Washington for further proceedings in conformity with the opinion of this Court.

February 24, 1931.

You, therefore, are hereby commanded that such execution and further proceedings be had in such cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of *certiorari* notwithstanding.

WITNESS, the Honorable CHARLES E. HUGHES, Chief Justice of the United States, the twenty-seventh day of March, in the year of our Lord one thousand nine hundred and thirty-one.

CHARLES ELMORE CROPLEY,
Clerk of the Supreme Court of the United States.

Costs of appellee:

Clerk	$28.55
Printing part of record	16.15
Attorney	20.00
	$64.70

Let the within Mandate be entered this 2nd day of April, 1931.

NETERER,
U. S. District Judge.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1930

Costs of Axel Langnes, owner of the Diesel Halibut Vessel "Aloha," her engines, etc., in No. 38:

1929, October Term—Docketing cause and filing record, $5.00; appearance, $.25; filing precipt $.25 and receipt, $.25; filing papers, $4.25; filing brief, $3.00; submission, $.20; order, $.20; filing and recording, $.65; certified copy of the order, $2.50 and continuance, $.25.

19—, October Term—Transfer, $1.00; filing papers, $2.50; argument, $.20; decree, $1.00; filing same, $.25; recording, $.40; mandate, $5.00; preparing record for printer, etc., $1.00; cost of printing part of record, $16.15; attorney's docket fee, $20.00; costs and copy, $.40.

$64.70

FEE BOOK, Page 34748.

TEST: CHARLES ELMORE CROPLEY,
Clerk of the Supreme Court
of the United States.

Endorsed: Filed in the United States District Court, Western District of Washington, Northern Division, April 2, 1931.

ED. M. LAKIN, *Clerk.*
By S. COOK, *Deputy.*

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF WASHINGTON, ss.

I, ED. M. LAKIN, Clerk of the United States District Court in and for the Western District of

Washington, do hereby certify that the annexed and foregoing is a true and full copy of the original

Motion to Dissolve Restraining Order, Filed Dec. 31, 1931;

Order Dissolving Restraining Order, Filed Jan. 4, 1932;

Motion for Restraining Order, Filed Jan. 27, 1932;

Petition for Rehearing on Petitioner's Motion for Restraining Order, Filed Feb. 4, 1932;

Affidavit of Samuel B. Bassett, Filed Feb. 4, 1932;

Decision on Restraining Order, etc., Filed Feb. 2, 1932;

Restraining Order, Filed Feb. 8, 1932;

Mandate, Supreme Court of the United States, Filed April 2, 1931.

(being pages numbered from 1 to 40, inclusive), now remaining among the records of the said Court in my office.

IN TESTIMONY WEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Seattle, this 5th day of March, A. D. 1932.

ED. M. LAKIN, *Clerk.*

(SEAL) *By* T. W. EGGER, *Deputy Clerk.*

SUPREME COURT OF THE UNITED STATES.

No. —, Original.—October Term, 1931.

Ex parte Winfield A. Green. } Motion for leave to file a Petition for Mandamus.

[May 23, 1932.]

Mr. Justice Sutherland delivered the opinion of the Court.

This is a motion by Winfield A. Green for leave to file a petition for a writ of mandamus against the federal district court for the western district of Washington to show cause why the writ should not issue requiring the judge thereof to conform to the opinion of this court in *Langnes* v. *Green*, 282 U. S. 531. In that case Green had brought an action against Langnes in a superior court of the State of Washington to recover damages for personal injury suffered while employed upon the "Aloha," a fishing vessel of which Langnes was the sole owner. Four months thereafter, while that action was pending, Langnes brought a proceeding in the federal district court, praying a limitation of liability under the appropriate provisions of the Revised Statutes. The parties stipulated that the vessel was of no greater value than the sum of $5,000. Upon the filing of the petition, the district court issued an order restraining further proceedings in the state court, and a monition to all claimants to present their claims within a time fixed. Green filed his claim in the amount of $25,000 for damages, which was the only claim ever filed, and thereupon moved to dissolve the restraining order. The district court denied the motion, and tried the cause in respect of respondent's claim, holding there was no liability and entering a decree accordingly. An appeal followed to the Circuit Court of Appeals for the Ninth Circuit. That court reversed the decree and remanded the cause upon grounds which need not now be stated.

We reversed the decrees of both courts, and remanded the cause to the district court for further proceedings. We held that the action was properly brought in the state court under § 24 (3) of

the Judicial Code, U. S. C., Title 28, § 41 (3), which saves to suitors in all cases of admiralty "the right of a common-law remedy where the common law is competent to give it," and that the petition for a limitation of liability also was properly brought in the federal district court. The situation then being that one statute afforded the right to a common law remedy, and another the right to seek a limitation of liability, we said that a case was presented for the exercise of the sound discretion of the district court whether to dissolve the restraining order and permit the state court to proceed, or to retain complete jurisdiction; and, upon consideration of the matter, we held that such discretion should have been exercised so as to permit the state court to proceed.

But we also said that the district court, as a matter of precaution, should retain the petition for a limitation of liability "to be dealt with in the possible but (since it must be assumed that respondent's motion was not an idle gesture but was made with full appreciation of the state court's entire lack of admiralty jurisdiction) the unlikely event that the right of petitioner to a limited liability might be brought into question in the state court, or the case otherwise assume such form in that court as to bring it within the exclusive power of a court of admiralty."

As authority for that disposition of the matter we cited *The Lotta*, 150 Fed. 219, where Judge Brawley, dealing with a similar situation, had taken that course. We quoted from his opinion, among other things, the following:

"All that the petitioner can fairly claim is that he should not be subject to a personal judgment for an indefinite amount and beyond the value of his interest in the Lotta and her freight. . . . if it should hereafter appear in the course of the proceedings in the state court that a question is raised as to the right of petitioner to a limited liability, this court has exclusive cognizance of such a question . . . and the decision upon the question of the injunction is predicated upon the assumption that that question is not involved in the suit in the state court, and that the only questions to be decided there are, first, whether the defendant is liable at all, and, if so, as to the value of the vessel and her freight, which is the limit of defendant's liability."

It is clear from our opinion that the state court has no jurisdiction to determine the question of the owner's right to a limited liability, and that if the value of the vessel be not accepted as the

limit of the owner's liability, the federal court is authorized to resume jurisdiction and dispose of the whole case.

Notwithstanding the foregoing, Green, following the remission of the cause to the state court, put in issue the right of the owner to limited liability, by challenging the seaworthiness of the vessel and the lack of the owner's privity or knowledge. The matter was properly brought before the federal district court, and that court held that the question of the owner's right to limited liability having been raised, the cause became cognizable only in admiralty, and that its further prosecution in the state court should be enjoined. In this the district court was right, and the motion for leave to file the petition for writ of mandamus must be denied.

The district court, however, gave Green until a time fixed to withdraw, in the state court, the issue as to the right to limited liability, in which event the restraining order was not to issue. That court, upon being seasonably advised of the proceeding here and of our disposition of it, will, no doubt, grant further reasonable time to allow Green to elect whether to withdraw the admiralty issue which he has raised in the state court; and the denial of the motion is made without prejudice to such action.

Leave denied.

A true copy.

Test:

Clerk, Supreme Court, U. S.